IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

MONDAY, THE 1ST OCTOBER 2007 / 9TH ASWINA 1929

WP(C).No. 28338 of 2007(W)

PETITIONER:

PODUVAL INDUSTRIES,
M.G.ROAD, COCHIN-682035,
REPRESENTED BY ITS PROPRIETOR,
MR. K.RANJIT.

BY ADV. SRI.PREMJIT NAGENDRAN

RESPONDENT:

THE INTELLIGENCE OFFICER,
SQUAD NO.II, COMMERCIAL TAXES,
ALAPPUZHA.

BY GOVERNMENT PLEADER SRI.M.P.SREEKRISHNAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 01/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC, J.
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W.P.(C) NO. 28338 OF 2007
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Dated this the 1st day of October, 2007

J U D G M E N T

Petitioner is a dealer of Generator Sets registered under the Kerala Value Added Tax Act. This writ petition has been filed praying for quashing Ext.P4 notice, by which, the Diesel Generator Set has been detained by the respondents while it was being transported to a consignee from Mahe to Thiruvananthapuram under a cover of Ext.P3 delivery note. Petitioner also seeks a direction to the respondent to release the goods without insisting on security deposit as demanded under Ext.P4.

2. The allegation in Ext.P4 is that the Diesel Generator Set can be transported to Kerala through border check post after remitting advance tax and that since tax was not remitted at the check post, the vehicle with the goods was detained demanding advance tax. It is also stated that on subsequent enquiries with the check post authorities at Chungam, it has come to be noted that the vehicle crossed the border check post from Mahe at 8.50

A.M on 20/9/2007. It is also stated that the check post authorities also informed that the same vehicle had transported the same Diesel Generator Set on the same day at 3 A.M to Puduchery Mahe and thereafter raised invoice of M/s.Poduval Industries, Mahe, Pondichery to Thiruvananthapuram. According to the respondent, this was done only for evading tax in the guise of stock transfer.

3. The case was posted for the instruction of the Government Pleader and the instructions furnished by the Department inter-alia state as follows:

> "Our reasonable suspicion is that M/s.Poduval Industries with TIN 320703 50722 who has manufactured the goods at their unit at Edayar Industrial Estate at Edayar, Kochin has sold the goods to M/s.Nikunjam Constructions, Thiruvananthapuram and to avoid or to evade VAT thereon, they have raised first a stock transfer document to their branch at Mahe and thereafter raised a sale bill of their Mahe branch to the purchasing dealer at Thiruvananthapuram, without transporting the goods to Mahe. Based on this suspicion, the Intelligence Officer wanted the driver of the vehicle to produce payment receipt for purchasing diesel from any of the retail diesel outlet between Ernakulam and Mahe and a trip sheet of the vehicle or GVR of the vehicle. But the driver cannot produce any of the above mentioned document to support his claim that he had plied the vehicle with goods from Ernakulam to Mahe and thereafter from Mahe to Thiruvananthapuram upto the time of interception at Kariyilakulangara."

The above instruction given to the learned Government Pleader runs counter to what is mentioned in Ext.P4, which confirms that the vehicle passed through the check post at Azhiyoor Chungam on 20/9/07.

4. Be that as it may, the matter requires to be adjudicated by the respondent and I do not wish to express anything on the merits of the respective contentions. In the meanwhile the goods are under detention and the petitioner prays for its release.

5. Having heard the learned Government Pleader on this, I dispose of this writ petition directing that the goods mentioned in Ext.P4 shall be released to the petitioner on remitting the advance tax payable and on execution of a bond for the balance amount. Thereafter, it is for the Enquiry Officer to continue the adjudication and complete the same in accordance with law.

Writ petition is disposed of.

ANTONY DOMINIC, JUDGE.

Rp